



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** California Shorthand Reporting

**File:** B-250302.2

**Date:** March 4, 1993

Marika Edler for the protester.  
Gloria Joseph, National Labor Relations Board, for the agency.  
Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency's cancellation of solicitation after bid opening on the basis that all acceptable bids are unreasonable in price is proper where the current low bids exceed the prior contract prices by more than 45 percent and the protester has not shown that the agency's comparison of these prices was flawed.

### DECISION

California Shorthand Reporting protests the cancellation of invitation for bids (IFB) No. 93-SB-00058, issued by the National Labor Relations Board (NLRB) for court reporting services. California contends that the NLRB improperly determined that California's low bid was unreasonably priced.

We deny the protest.

The IFB called for verbatim reporting and transcription services and advised bidders that their prices should include all recordings, transcriptions, and necessary postage or other transportation charges to deliver the required copies of completed transcripts, original exhibits, duplicate exhibits, floppy diskettes and transcript reports to the destinations prescribed in the contract. Section B of the IFB advised bidders to submit separate prices for the 36 geographical areas listed on the schedule of rates. The solicitation also advised bidders that separate awards would be made to the low bidder for each respective area.

The following bids were received at bid opening for regions 20 (San Francisco) and 32 (Oakland): California's low bid of \$1.35 per page; Capitol Hill's second low bid of

\$1.90 per page; and York's high bid of \$3.14 per page; approximately 1 hour after bid opening, the contracting officer also received untimely facsimile bids for these regions from Preston's Legal Support Services at \$.70 per page. During the agency's evaluation of the bids received, California filed a protest in our Office asserting that the agency's failure to award the firm a contract as the low bidder was improper. We subsequently dismissed the protest as academic when the contracting agency canceled the solicitation after determining that the bids received for Regions 20 and 32 were unreasonably priced. California's protest challenging the cancellation followed.

California contends that the contracting officer's determination that its prices were unreasonable was based improperly on the contracting officer's comparison of California's proposed prices with its prior contract prices and the untimely facsimile bid received in response to the solicitation. California argues that its prices are reasonable and that they were based on the fact that the recession caused a "tremendous loss" to its firm due to cancellation of hearings or settlement of disputes after a reporter performed the required transcription services.

Once bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the IFB. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1). Such a compelling reason to cancel exists when it is determined that all otherwise acceptable bids received are at unreasonable prices. FAR § 14.404-1(c)(6).

An agency's determination of price reasonableness involves the exercise of discretion on the part of the contracting officer, which our Office will not question, unless it is clearly unreasonable or there is a showing of fraud or bad faith on the part of the contracting official. Sylvan Serv. Corp., B-222482, July 22, 1986, 86-2 CPD ¶ 89. The FAR provides that the contracting officer is responsible for selecting and using whatever price analysis techniques that will ensure a fair and reasonable price. See FAR §§ 14.407-2, 15.805-2. Two techniques are a comparison of proposed prices received in response to the solicitation and a comparison of prior proposed prices and contract prices with current proposed prices. FAR § 15.805-2(a) and (b); Sylvan Serv. Corp., supra.

Here, the record shows that the agency, in making its price reasonableness determination, relied primarily on a comparison between the bids received and prior contract

prices. The prices under the prior contracts revealed the following pricing patterns: Peters Shorthand Reporting Corporation bid \$1.19 per page for services from January 1987 to September 1988 and California subsequently bid \$1.18 per page for services from 1988 through 1989 and \$.93 per page for services from 1989 through 1992. Because the current prices were approximately 45 percent more than California's most recent contract prices and approximately 11 percent more than Peter's prior contract price, the contracting officer concluded that they were unreasonable.

We are not persuaded by the protester's argument that the contracting officer improperly compared California's current rates with the rates in two prior reporting and transcription contracts in the Oakland and San Francisco areas. While the protester contends that its recent contract prices were low as a result of "maneuvering" by NLRB in "pitting competitors against each other," the protester has not presented any evidence either to substantiate its allegation or to explain its position. Absent any evidence that the agency was or should have been on notice that California previously had submitted unreasonably low bid prices such that it should have taken this information into account in judging the reasonableness of California's current bid prices, the protester has not shown that the price comparison by the agency was in any way flawed or unreasonable. In view of the disparity between the protester's prices for similar services under its prior contracts and the prices submitted under the current solicitation, we have no basis to question the agency's comparison of the contract prices with the bid prices or its conclusion that California's current bid prices, which are 45 percent higher, are unreasonable. See Building Maintenance Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233, where cancellation of a solicitation was justified where the low bid exceeded the government estimate by as little as 7.2 percent.

Similarly, the record does not support the protester's allegation that the agency's estimated number of pages for duplicate copy sales was incorrect and that the agency failed to take this into consideration when it reviewed California's bid prices. California argues that it adjusted its bid prices because the number of duplicate copy sales has been decreasing due to the fact that law firms have been opting to order transcripts via Freedom of Information Act requests rather than purchasing them from the contractor.

According to the protester, this practice is illegal<sup>1</sup> and has been detrimental to its financial survival.

As a preliminary matter, California's contention that the agency's estimates are too high in effect is a challenge to the terms of the IFB which, to be timely, had to be filed before bid opening. See 4 C.F.R. § 21.2(a)(1) (1992). In any event, the agency reports that its estimates of duplicate copy sales were based on the number of pages California reported as sold from May 1991 to April 1992 as well as the agency's anticipated increase in cases. The record establishes that the agency's estimates are only slightly different (e.g., 2 percent higher in region 20 and 3 percent higher in region 32) than the numbers California itself previously reported.<sup>2</sup> The protester has not addressed the agency's specific responses on this issue, and we see no basis for questioning the agency's calculations.

California also argues that in determining price reasonableness, the agency should have compared its proposed prices for Oakland and San Francisco with those proposed for Regions 21 and 31 (the Los Angeles area) rather than comparing its current prices with its prior contract price for Oakland and San Francisco. According to California, these areas are similar and, hence, the \$1.35 per page bid

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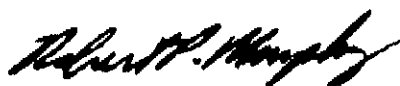
<sup>1</sup>Our Office considers bid protest challenges to the award or proposed award of contracts. 31 U.S.C. § 3552 (1992). Therefore, we generally do not exercise jurisdiction to review matters of contract administration, which are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the Court of Federal Claims. C3, Inc., B-233742.11, Dec. 27, 1990, 90-2 CPD ¶ 522. The few exceptions to this rule include situations where it is alleged that a contract modification improperly exceeds the scope of the contract and therefore should have been the subject of a new procurement, CAD Language Sys., Inc., 68 Comp. Gen. 376 (1989), 89-1 CPD ¶ 364; where the protest alleges that the exercise of a contractor's option is contrary to applicable regulations, Bristol Elecs., Inc., B-193591, June 7, 1979, 79-1 CPD ¶ 403; or where an agency's basis for contract termination is that the contract was improperly awarded. See Condotel, Inc.; Chester L. and Harvelene Lewis, B-225791; B-225791.2, June 30, 1987, 87-1 CPD ¶ 644. None of these exceptions applies to this case. Accordingly, there is no basis for us to consider this issue.

<sup>2</sup>In region 20, the agency's estimated page volume was 31,106 and California's prior reported page volume was 30,500; in region 21, the agency's estimated page volume was 46,325 while California's prior reported page volume was 44,979.

prices for the Los Angeles area show that its bid price of \$1.35 for the Oakland and San Francisco areas was reasonable.

The protester's contention that its current prices should have been compared with the prices submitted for the regions in the Los Angeles area lacks merit. The record demonstrates that the page rates vary from one region to another and that, historically, the rates in the Los Angeles area have always been higher than those in the Oakland and San Francisco area. The protester itself states only that the areas are similar, not identical, and simply has made no showing that comparison of rates offered in one region with the rates offered in another region is a sound measure of price reasonableness.

The protest is denied.



*for* James F. Hinchman  
General Counsel